

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

RICHARD J. NISSEN,

Plaintiff,

vs.

THE WILLIAM THOMAS GROUP, INC.,

and

ENVIROMATIC CORPORATION OF
AMERICA, INC.

Defendants.

Cause No. 4:22-cv-395

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Defendant Enviromatic Corporation of America, Inc. (“Enviromatic”), by and through undersigned counsel, removes this case to the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. §§ 1441 and 1446, and states as follows:

STATE COURT ACTION

1. On February 25, 2022, Plaintiff Richard J. Nissen filed his Petition in the Circuit Court of the Twenty-First Judicial Circuit, Missouri, in the County of St. Louis, Missouri, in Case No. 22SL-CC01211.

2. On March 4, 2022, Enviromatic was served with summons and Plaintiff’s Petition through its registered agent in Clayton, Missouri.

3. Plaintiff alleges that on or about June 24, 2019, when, at the request of P.F. Chang’s, a restaurant located in the building where Plaintiff maintains a dental office, Defendants negligently caused water and grease to enter Plaintiff’s office while “attempting to clean the restaurant’s exhaust system on the roof top of the building.” Plaintiff further alleges that the water

and grease caused extensive damage to the Plaintiff's office equipment, cabinets, floor coverings, and supplies.

4. In addition to Enviromatic, Plaintiff has named The William Thomas Group as a defendant in this case.

BASIS FOR FEDERAL JURISDICTION

5. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

Diversity of Citizenship

6. Plaintiff is a citizen of the State of Missouri. In his state court Complaint Plaintiff alleged that he is a resident of St. Louis County, Missouri. According to a LexisNexis "Comprehensive Report," Plaintiff has lived in the State of Missouri since at least 1979. Moreover, upon information and belief, Plaintiff's business is located in the State of Missouri. Defendant's investigation and Plaintiff's own allegations confirm that Plaintiff is not only a resident of Missouri but is a citizen of the state of Missouri with the requisite intent of living within the state "over the long run." See *Heinen v. Northrop Grumman Corp.*, 671 F.3d 669, 670 (7th Cir. 2012).

7. Enviromatic is a citizen of Minnesota, as it is a corporation organized under the laws of Minnesota and maintains its principal place of business in Minnesota. See attached Exhibit D.

8. The William Thomas Group is a corporation organized under the laws of Ohio and maintains its principal place of business in Ohio. See attached Exhibit E.

9. The William Thomas Group has consented to the removal of this case to Federal Court. See Exhibit G.

Amount in Controversy

10. Pursuant to state-court rules of pleading, Plaintiff did not specify the exact amount of damages sought. However, in his Petition, Plaintiff asks for damages in an amount in excess of \$50,000.00,” See Exhibit A. Furthermore, Plaintiff has clarified his claim for damages in a settlement demand attached as Exhibit F in the amount of \$152,178.38.

11. Where a complaint discloses little about the value of the claims, the court may consider opposing counsel’s “good faith estimate of the stakes, . . . if it is plausible and supported by a preponderance of the evidence.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006). “Once a defendant in a removal case has established the requisite amount in controversy, the plaintiff can defeat jurisdiction only if it appears to a legal certainty that the claim is really for less than the jurisdictional amount.” *Id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

12. Plaintiff seeks to recover at least \$152,178.38 for damages incurred to his office and office equipment, allegedly sustained as a result of the water and grease leak which Plaintiff claims was caused by Defendants. See Exhibits A and F.

13. In *Schmidt v. Flesch*, the Court found that a Plaintiff’s allegations stemming from a motor vehicle accident, where they sought damages for past and future medical expenses, lost wages, property damage, future physical and mental pain; coupled with the Plaintiff’s settlement demand in the amount of \$225,000 dollars satisfied the amount in controversy. *Schmidt v. Flesch*, No. 4:05CV1498 HEA, 2006 U.S. Dist. LEXIS 23040 (E.D. Mo. Apr. 13, 2006). The Court found that although a settlement demand letter is not dispositive, such a settlement demand is relevant in

the determination as to whether the jurisdictional amount is satisfied. *Id.* at 5. The Court ultimately held that the settlement demand, the details of the Plaintiff's injuries contained in the settlement demand, and the nature of the allegations, supported its conclusion that the Court's jurisdictional amount in controversy was satisfied. *See Id.* at 5-6.

TIMELINESS OF REMOVAL

14. Enviromatic was served with summons and Plaintiff's Petition on March 4, 2022.

15. This removal is timely under 28 U.S.C. § 1446(b), as Enviromatic files this removal on April 4, 2022 which is the 30th day from first receiving a copy of the Petition, excluding Sunday, April 3rd, pursuant to Rule 6 FRCP.

FILING & NOTICE REQUIREMENTS

16. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Enviromatic in the state court action is filed as Exhibit A (Petition) and Exhibit B (Notice of Service).

17. As required by 28 U.S.C. § 1446(d), counsel for Enviromatic contemporaneously files a Notice of Filing with the Circuit Court for the Twenty-First Judicial District of Missouri, in St. Louis County, Missouri, which will advise the state court and Plaintiff of this removal. A copy of such notice, without exhibits, is attached as Exhibit C.

WHEREFORE, Defendant Enviromatic Corporation of America, Inc. removes this action to this Court and respectfully requests that this Court award such further relief as this Court deems appropriate and just.

DEFENDANT DEMANDS TRIAL BY JURY.

Respectfully submitted,

/s/ William A. Brasher

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Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April 2022, the foregoing was filed electronically using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record:

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/s/ William A. Brasher